THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.10139 of 2005

Dated: 27th March, 2006

Between:

T.Hari Prasad.

…..PETITIONER

AND

The A.P.S.R.T.C rep.

by its Depot Manager, Macherla Depot,

Guntur District & 2 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE

N.V.RAMANA

W.P.No.10139 of 2005

ORDER:

The petitioner, who is a Conductor in the respondent-Corporation, has filed this writ petition seeking to call for the records in connection with the Award of the Labour Court in I.D.No.100/1999, dated 17-9-2004, published in the gazette vide

G.O. Rt. No.1959, dated 25-10-2004, and to set aside the same insofar it went against the petitioner in not granting full wages with all benefits for the period he was out of employment.

The petitioner while working as Conductor at Macherla Depot was involved in certain irregularities, and after an enquiry, he was removed from service vide proceedings dated 24-9-1998. Questioning the said removal order, the petitioner approached the Labour Court, and the Labour Court, by order dated 17.09.2004 passed in I.D. No. 100 of 1999, set aside the order of removal and ordered reinstatement of the petitioner afresh without backwages and without continuity of service. Hence, this writ petition.

The learned counsel for the petitioner contended that the Labour Court, having ordered reinstatement of the petitioner into service, was not justified in denying backwages for the period he was out of employment, and as such, prayed that the writ petition be allowed, and the respondents-Corporation be directed to pay even backwages.

The learned Standing Counsel for A.P.S.R.T.C based on the counter affidavit filed by the respondents submitted that the petitioner has committed serious cash and ticket irregularities, for which a detailed enquiry was conducted duly giving all reasonable opportunities to the petitioner and the charges leveled against the petitioner were proved and taking into consideration of the seriousness of the offence, final order of removal from service was passed. It is further stated that the appeal and review filed by the petitioner, were also rejected by the authorities. The Labour Court, though found that the misconduct alleged against the petitioner is proved, feeling that punishment of removal from service was disproportionate to proved charge, ordered his reinstatement into service, but denied backwages, which is just and reasonable, and prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner as also the learned Standing Counsel for the respondents and perused the award of the labour Court.

On the charges leveled against the petitioner, an enquiry was conducted. In the enquiry, since the petitioner admitted all the charges, the charges leveled against him stood proved. Based on the enquiry report, a show cause notice was issued, and upon considering the explanation submitted by the petitioner thereto, the disciplinary authority, passed an order of removal, which in appeal was confirmed. However, the Labour Court has taken a lenient view and ordered reinstatement of the petitioner into service without backwages and without continuity of service.

It is a case of non-issuance of proper tickets to the passengers. The charges leveled against the petitioner stood proved. The Labour Court, in fact, concurred with the findings of the disciplinary authority and the appellate authorities that the petitioner having collected fare from passengers intentionally avoided issuing proper tickets to

them. Non-issuance of proper tickets by collecting fares from passengers, in fact, is a grave charge of misconduct, which in the present case stood proved. Though the Labour Court had concurred with the order of the appellate authorities, confirming the order of the disciplinary authority, however, felt that the punishment awarded by the disciplinary authority is excessive and disproportionate to the misconduct, and set aside the order of removal, and directed his reinstatement into service without backwages and without continuity of service. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See ***U.P. State Brassware Corpn. Ltd. V. Uday Narain Pandey***[1]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authorities had passed orders in violation of the principles of natural justice. But, the Labour Court has set aside the order of removal passed by the disciplinary authority, as confirmed by the appellate authorities, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct. In ***Karnataka Bank Ltd. V. A.L. Mohan Rao***[2], the apex Court held that it is not for the Courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authorities, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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(N.V. RAMANA, J.)

Date:, 27th March, 2006.

GRK

THE HONOURABLE SRI JUSTICE N.V.RAMANA

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